

July 14, 2021

Exhibit 7

REPORT TO WATER POLICY INTERIM COMMITTEE
07/14/21

My goal is to get this committee to endorse and support a bill so the next legislative session can right this wrong that Federal Grazing District ranchers are facing.

- **FIRST** we are only talking about 1934 TGA authorized Federal Grazing District allotments administered by the BLM. (chiefly valuable for grazing.) *used for livestock use only.*

- I will not go into the details now but ask me later if you don't understand what these districts are or how they were formed.

- **SECOND** what we are dealing with on these allotments is atmospheric water (snow and rain) that mainly falls on the allotment.

- the water comes in the spring (hopefully) and has to be collected and stored for livestock use in the dry summer months.

- **THIRD** these livestock water rights were not addressed in the 1973 Montana Water Use Act that dealt with live streams, irrigation and ground water because water right laws and judicial findings were aimed at reducing conflicts between users. With TGA livestock water rights there are no conflicts between users. *Enter the Federal Government*

- **HOWEVER** - Since the 1970's the BLM has been trying to get our livestock water RIGHTS. Why would they want the rights? It comes down to one word - CONTROL!!
- if they LET us use the water where is the problem? What happens when they do not LET us use the water? What is the value of the ranch without a guaranteed summer livestock water right?

- the BLM tried to get the water rights in both NM and Idaho and lost mainly because; a) it's the user of the water and not the owner of the land that gets the water right, and b) the ranchers' cows are not their beneficial use. In Montana they found a 1912 MT Supreme Court case, Bailey vs. Tintinger, which was all about irrigation and not about stockwater use that they have ridiculously used to claim a beneficial use.

- READ 1947 CODE ABOUT BAILEY *1 insert*

- in the recent Beaver Creek Adjudication the BLM claimed that since they owned the pits and reservoirs (which they don't) they were supplying water to the ranchers' cows making the ranchers' cows their beneficial use. What's unbelievable was the MT Water Court and a majority of the MT Supreme Court bought this totally bogus claim and ruled in the BLM's favor (Justice McKinnon dissent). *8-1* It is now MT law which means all TGA ranchers could lose their livestock water rights.

- discuss the agreement with Beaver Creek ranchers. *2 insert*

- As a result, the Federal Grazing District ranchers have two choices, very expensive litigation or have the Montana legislature pass a bill similar to the one proposed.

- In conclusion, what this proposed bill hopes to accomplish is:

- ONE - give the livestock water rights to the real beneficial users of the water, and
- TWO - give the TGA ranchers a simple way to file for their livestock water rights.

*They have
No Plans to
use the water
only want
the rights*

*US Supreme
Court
ruled
The Idaho
Supreme Court
ruled*

*If water rights
belong to
ranchers
- if BLM takes
grazing right
have to p 2-1
for taking*

Inserts

1 ~~and had nothing in common with water use on these allotments.~~ The Revised Codes of Montana 1947 (the laws in force at the conclusion of the 1963 legislature) details what this case involved:

"A public service corporation, organized for the purpose of constructing an irrigation system and selling or renting water to reclaim arid lands, has a completed appropriation of water when its distributing system is finished, and when the corporation is ready to deliver water to users upon demand, and offers to do so."

In other words the Supreme Court decided the suppliers of the water could obtain a MT Water Right even though they were not personally putting it to a beneficial use. *They sound like the start of irrigation districts*

The Federal legal beagles decided that since the DNRC interpreted the Water Use Act to give control of pits and reservoirs to the BLM they would claim they were delivering water to our livestock a la Bailey. This was so factually and legally wrong that no intelligent individual would buy it. Unfortunately, the MT Water Court and the majority of the MT Supreme Court bought it (Justice McKinnon wrote a brilliant dissent).

This happened in the recent Beaver Creek adjudication (Phillips and Valley Counties).

2 After the Supreme Court ruling, the BLM met with some of the ranchers and offered a deal. They threatened the ranchers that if they did not take their deal the ranchers would lose all water to wildlife (a threat is illegal). The BLM would not protest the ranchers filing on the in stream flows if the ranchers did not protest the BLM filing on the pits and reservoirs. *The ranchers signed!*

~~Where do you think the water is on the hot days of summer?~~

~~The DNRC has already told me the issue of who owns the water rights in the pits and reservoirs has already been settled.~~